

LEGISLATURE OF NEBRASKA

ONE HUNDRED FIRST LEGISLATURE

FIRST SESSION

**LEGISLATIVE BILL 410**

Introduced by Karpisek, 32; Council, 11; Nordquist, 7.

Read first time January 16, 2009

Committee: Government, Military and Veterans Affairs

A BILL

1 FOR AN ACT relating to elections; to amend sections 32-1119  
2 and 32-1121, Reissue Revised Statutes of Nebraska; to  
3 change provisions relating to recounts; and to repeal the  
4 original sections.

5 Be it enacted by the people of the State of Nebraska,

1           Section 1. Section 32-1119, Reissue Revised Statutes of  
2 Nebraska, is amended to read:

3           32-1119 (1) If it appears as evidenced by the abstract  
4 of votes that any candidate failed to be nominated or elected by  
5 a margin of (a) one percent or less of the votes received by  
6 the candidate who received the highest number of votes for the  
7 office at an election in which more than five hundred total votes  
8 were cast or (b) two percent or less of the votes received by  
9 the candidate who received the highest number of votes for the  
10 office at an election in which five hundred or less total votes  
11 were cast, then such candidate shall be entitled to a recount.  
12 Any losing candidate may waive his or her right to a recount by  
13 filing a written statement with the Secretary of State, election  
14 commissioner, or county clerk with whom he or she made his or her  
15 filing. All expenses of a recount under this section shall be paid  
16 by those political subdivisions involved in the recount.

17           (2) Recounts shall be made by the county canvassing  
18 board which officiated in making the official county canvass of  
19 the election returns. If any member of the county canvassing  
20 board cannot participate in the recount, another person shall be  
21 appointed by the election commissioner or county clerk to take the  
22 member's place.

23           (3) Recounts for candidates who filed with the Secretary  
24 of State shall be made on the fifth Wednesday after the election  
25 and shall commence at 9 a.m. The Secretary of State shall inform

1 each election commissioner or county clerk of the names of the  
2 candidates for which the board of state canvassers deems a recount  
3 to be necessary.

4 (4) The election commissioner or county clerk shall be  
5 responsible for recounting the ballots for those candidates for  
6 whom the county canvassing board deems a recount to be necessary.  
7 The recount shall be made as soon as possible after the adjournment  
8 of the county canvassing board, except that if a recount is  
9 required under subsection (3) of this section, the recounts may be  
10 conducted concurrently.

11 (5) The Secretary of State, election commissioner, or  
12 county clerk shall notify all candidates whose ballots will be  
13 recounted of the time, date, and place of the recount. Candidates  
14 whose ballots will be recounted may be present or be represented by  
15 an agent appointed by the candidate.

16 (6) The procedures for the recounting of ballots required  
17 under subsection (1) of this section shall be the same as those  
18 used for the counting of ballots on election day. The recount shall  
19 be conducted at the county courthouse, except that if vote counting  
20 devices are used for the counting or recounting, such counting  
21 or recounting may be accomplished at the site of the devices.  
22 Counties counting ballots by using a vote counting device shall  
23 first recount the ballots by use of the device. If substantial  
24 changes are found, the ballots shall then be counted using such  
25 device in any precinct which might reflect a substantial change.

1           Sec. 2. Section 32-1121, Reissue Revised Statutes of  
2 Nebraska, is amended to read:

3           32-1121 ~~If any~~ Any candidate who failed to be nominated  
4 or elected by more than the margin provided in section 32-1119,  
5 ~~the losing candidate~~ may submit a certified written request for a  
6 manual recount at his or her expense. The request shall be filed  
7 with the filing officer with whom the candidate filed for election  
8 not later than the tenth day after the county canvassing board  
9 or the board of state canvassers convenes. The recount shall be  
10 conducted ~~as provided in section 32-1119.~~ manually by the county  
11 canvassing board. The requesting candidate may provide the filing  
12 officer with a discretionary list of up to ten election precincts  
13 to be recounted first and may waive the balance of the recount  
14 after these precincts have been recounted. Prior to conducting the  
15 recount for a county or for a listed precinct, the cost of the  
16 recount shall be determined for both the county and the listed  
17 precinct by the election commissioner or county clerk and the  
18 requesting candidate shall be so notified. The candidate requesting  
19 the recount shall pay the ~~estimated~~ determined cost of the recount  
20 before the recount is scheduled to be conducted for a county or for  
21 a listed precinct. If the recount involves more than one county,  
22 the election commissioner or county clerk shall certify the cost to  
23 the Secretary of State. The Secretary of State shall then notify  
24 the candidate of the determined cost for each county and for listed  
25 precincts, and the determined cost shall be paid before ~~any~~ a

1 recount is scheduled to be conducted for the county or for listed  
2 precincts. The candidate shall pay the cost on demand to the county  
3 treasurer of each county involved, and such sums shall be placed in  
4 the county general fund to help defray the cost of the recount. If  
5 the actual expense is less than the determined cost, the candidate  
6 may file a claim with the county board for overpayment of the  
7 recount. If the recount determines the candidate to be the winner,  
8 all costs which he or she paid shall be refunded. Refunds shall be  
9 made from the county general fund.

10           Sec. 3. Original sections 32-1119 and 32-1121, Reissue  
11 Revised Statutes of Nebraska, are repealed.